

# **EXHIBIT D**

**From:** [Emily Cronin](#)  
**To:** [Kenney, Chad \(DC\)](#); [NYT-AI-SG-Service@simplelists.susmangodfrey.com](mailto:NYT-AI-SG-Service@simplelists.susmangodfrey.com)  
**Cc:** [#C-M OPENAI COPYRIGHT LITIGATION - LW TEAM](#); [OpenAICopyright@mofo.com](mailto:OpenAICopyright@mofo.com); [KVPOAI@keker.com](mailto:KVPOAI@keker.com)  
**Subject:** Re: NYT v. Microsoft, et al. - SDNY Case No 1:23-cv-11195-SHS  
**Date:** Tuesday, May 14, 2024 8:19:43 AM

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Counsel,

Thank you for your letter. Ahead of our call today, The Times's responses to the issues you raised are below.

On privilege issues, including Categories B and C, The Times reserves its rights to withhold any documents protected by the work product, common interest, or reporters' privilege and will log any responsive documents it withholds accordingly, subject to the terms of the ESI order. To the extent issues regarding reporters' privilege affects the Times's willingness to search for and review any category of documents, The Times will notify OpenAI.

For category A (Nos. 2, 7, 20, 21, 23), The Times stands by its responses and objections. The Times agreed to produce responsive non-privileged documents relating to The Times's process for obtaining the GPT Services outputs cited in the Complaint and relating to the creation of Exhibit J (Nos. 2, 20, 23). We don't agree that the remainder of the requests are relevant and proportional to the needs of the case. Nor do we agree that these other requests (Nos. 7, 21) are relevant to proving The Times's allegation that "individuals can access [NYT] content through Defendants' [] products without having to pay for it," which will be established through discovery of OpenAI's products and documents.

For category D (Nos. 4-6), The Times disagrees that documents in its possession relating to outputs of other generative AI services are relevant to OpenAI's liability or damages.

For category E (Nos. 8-12), The Times will agree to produce judicial or quasi-judicial determinations that any of the Asserted Works infringed a third party's rights, if any exist. The Times stands on its remaining responses and objections. OpenAI's request for all materials that informed the preparation of every copyrighted work at issue is overbroad and unduly burdensome, particularly because The Times has agreed to produce relevant documents proving authorship and ownership.

For category F (Nos. 13-15), The Times stands on its responses and objections. We're not sure what the dispute is on Request No. 15. The Times agreed to produce agreements relating to authorship, including work-for-hire agreements, which cover both categories of documents OpenAI identified in its letter (relevant work-for-hire agreements and other agreements relating to authorship). We're happy to discuss on the meet and confer.

For category G (No. 24), The Times stands on its objections. Request No. 24 is overbroad, unduly burdensome, and outside the scope of relevant discoverable material. The Times already agreed to produce responsive non-privileged communications with other news, media, writers' organizations, and publishers regarding licensing works to OpenAI (Request No. 25). What is OpenAI's basis for seeking more?

For category H (Nos. 33, 43), we don't understand the need for more than "documents sufficient to show the key terms of relevant licenses active from January 1, 2018 to the present," which we have agreed to produce.

For category I (Nos. 50-51), The Times stands on its objections that The Times's use of AI tools is not relevant to this case, since it is not about generative AI, particularly because The Times has agreed to produce relevant non-privileged documents relating to its use of generative AI (i.e. Request Nos. 46, 49).

For category J (Nos. 54-55), The Times is willing to discuss OpenAI's proposal on the meet and confer.

For category K, we will discuss on the meet and confer.

For category L, The Times will prepare a proposed search protocol this week.

For category M, The Times does not currently intend to withhold documents on the basis of its objection to the definition of "employee."

Thank you,

Emily

**Emily Cronin Stillman | Susman Godfrey LLP**

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**From:** "Chad.Kenney@lw.com" <Chad.Kenney@lw.com>

**Date:** Friday, May 10, 2024 at 11:05 AM

**To:** Emily Cronin Stillman <ECronin@susmangodfrey.com>, "NYT-AI-SG-

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**Subject:** RE: NYT v. Microsoft, et al. - SDNY Case No 1:23-cv-11195-SHS

**EXTERNAL Email**

Thanks, Emily. I just sent an invite for 2:30 ET on Tuesday.

Best,  
Chad

**Chad Kenney**

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**From:** Emily Cronin <ECronin@susmangodfrey.com>

**Sent:** Thursday, May 9, 2024 9:37 PM

**To:** Kenney, Chad (DC) <Chad.Kenney@lw.com>; NYT-AI-SG-Service@simplelists.susmangodfrey.com

**Cc:** #C-M OPENAI COPYRIGHT LITIGATION - LW TEAM <openaicopyrightlitigation.lwteam@lw.com>; OpenAICopyright@mofo.com; KVPOAI@keker.com

**Subject:** Re: NYT v. Microsoft, et al. - SDNY Case No 1:23-cv-11195-SHS

Chad,

We're available Tuesday after 2pm ET. We'll respond to the specific issues you raise before then.

Best,  
Emily

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**From:** <[NYT-AI-SG-Service@simplelists.susmangodfrey.com](mailto:NYT-AI-SG-Service@simplelists.susmangodfrey.com)> on behalf of "Chad.Kenney at lw.com (via NYT-AI-SG-Service list)" <[NYT-AI-SG-Service@simplelists.susmangodfrey.com](mailto:NYT-AI-SG-Service@simplelists.susmangodfrey.com)>

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**Date:** Thursday, May 9, 2024 at 5:23 PM

**To:** "[NYT-AI-SG-Service@simplelists.susmangodfrey.com](mailto:NYT-AI-SG-Service@simplelists.susmangodfrey.com)" <[NYT-AI-SG-Service@simplelists.susmangodfrey.com](mailto:NYT-AI-SG-Service@simplelists.susmangodfrey.com)>

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EXTERNAL Email

Counsel,

We have not heard back regarding this request. Please provide your availability for next Monday. If Monday is not available, please provide your availability for Tuesday or Wednesday. We are particularly concerned about Plaintiff's recalcitrance regarding the following requests:

1. Request Nos. 2, 7, 20, 21, and 23 (Regurgitation Prompting)
2. Plaintiff's blanket assertion of the reporter's privilege in response to Request Nos. 1, 3, 7, 10, 11, 12, 16, 17, 22, 24, 47, 48, 49, 50, 56
3. Request Nos. 13–15 (Ownership and Registration of Asserted Works)
4. Request Nos. 50 and 51 (Plaintiff's AI Tools)

Similarly, we also have not heard back regarding a deadline for Plaintiff's substantial completion of production of documents in response to this First Set of Requests for Production. Please let us know whether you will agree to a deadline of June 24th.

If we have not resolved our disputes regarding these issues by Wednesday, we will be moving to compel.

Best,  
Chad

**Chad Kenney**

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**From:** Kenney, Chad (DC)  
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**Subject:** NYT v. Microsoft, et al. - SDNY Case No 1:23-cv-11195-SHS

Counsel,

Please see the attached letter regarding OpenAI's First Set of Requests for Production.

Please provide your availability on Monday May 13th to meet and confer regarding these issues.

Best,  
Chad

**Chad Kenney**

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